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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

AGUSTIN ANTONIO et al., Plaintiffs and Respondents, v. CROSSROADS VILLAGE, LLC, Defendant and Appellant.	A153751 (Alameda County Super. Ct. No. RG14709405)

Crossroads Village, LLC (Crossroads Village) appeals the trial court's order granting class certification, its finding that release agreements did not waive tenants' rights to recover void rent increases, and its award of $723,344 to class members. We affirm the class certification order, but conclude many of the tenants who rented apartments from Crossroads Village released or waived their claims arising from defective rent increase notices. Those tenants cannot be awarded class action damages. We remand for a recalculation of the damages due the remaining class members.

FACTUAL AND PROCEDURAL HISTORY

This case concerns a landlord's acknowledged failure to comply with the terms of a rent ordinance in the City of Fremont's municipal code.[1] Section 9.60.040, subdivision

[1] The current version of chapter 9.60 of the City of Fremont's municipal code is called the "rent review ordinance." (Fremont Mun. Code, § 9.60.010, Ord. No. 13-2017, § 1 <https://www.codepublishing.com/CA/Fremont> [as of July 26, 2019].) Crossroads Village requests we take judicial notice of an earlier version of chapter 9.60, referred to by the parties as the "Residential Rent Increase Dispute Resolution Ordinance," or the

(d) of the RRIDRO provided that a landlord's notice of rent increase must include specified language regarding a procedure for conciliation, mediation and factfinding for disputes over rent increases. Section 9.60.030, subdivision (b) provided that "Any rent increase accomplished in violation of this chapter shall be void and no landlord may take any action to enforce such an invalid rent increase."

On January 9, 2014, Agustin Antonio filed a putative class action alleging Crossroads Village, the owner of a residential apartment complex in Fremont, California, raised rents in a manner that violated Fremont's municipal code, and, therefore, that the rent increases were void. Antonio alleged rent increase notices violated the terms of the RRIDRO. He asserted causes of action for breach of contract; violation of chapter 9.60 of Fremont's municipal code; unfair business practices; conversion; and he sought punitive damages and the appointment of an independent trustee or receiver.

On February 24, 2015, Antonio filed a first amended complaint (FAC) making similar allegations, but adding a cause of action for negligent hiring, supervising, or retaining of employees, and alleging that around March 2014, Crossroads Village "approached all class members, including class representative and/or his former roommates, and attempted to and/or did enforce the illegal rent increases" by "offering to return portions of the illegally increased rents while retaining portions of the illegally increased rents." This new allegation was based on the fact that around March 2014, after the lawsuit was initiated, Crossroads Village obtained release agreements from 186 out of 231 households that rented apartments from Crossroads Village (the "Release Agreements"). Antonio, who resided in the apartment complex from approximately March 2009 to August 2012, did not execute a Release Agreement.

In March 2016, Antonio moved for class certification. Crossroads Village opposed the motion arguing, among other things, that Antonio lacked standing to serve as the class representative because he did not execute a Release Agreement. In June 2016,

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"RRIDRO." Agustin Antonio joins in the request. We grant it. All references to the ordinance will be to this earlier version.

the court granted the motion. The court defined the class as "All tenants who lived at [the apartment complex] in Fremont, California and, at any time from January 9, 2010 through the date of this order, received at least one notice of change of terms of tenancy which notice did not contain . . . language [required by the RRIDRO.]"

After certifying the class, the court held a bench trial on Antonio's claims based on stipulated facts and joint exhibits. The court found Crossroads Village's rent increase notices dated "February 22, 2011, May 22, 2012, and June 24, 2013" were not in compliance with the RRIDRO and were therefore void. The court also found "the Release Agreements did not result in a waiver or compromise of the rent increases resulting from the noncompliant notices." The court found the "total amount of damages to be awarded to the class" for rent increase amounts from "February 2010 [through] October 2015" "does not exceed $723,344.00." On January 4, 2018, the court entered judgment in favor of Antonio and the class. Crossroads Village appeals.

DISCUSSION

Crossroads Village contends the court "abused its discretion in certifying any issues relative to the enforceability of the Release Agreements." Crossroads Village also argues the court erred in determining the Release Agreements were " 'ineffective,' " and in its award of damages. We affirm the order certifying the class, but conclude the court erred in determining the Release Agreements did not result in a waiver or compromise of rent increases resulting from noncompliant notices.

I. *Governing Law and Standard of Review*

"The party advocating class treatment must demonstrate the existence of an ascertainable and sufficiently numerous class, a well-defined community of interest, and substantial benefits from certification that render proceeding as a class superior to the alternatives. [Citations.] 'In turn, the "community of interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." ' " (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.) "On review of a class certification order, an appellate

court's inquiry is narrowly circumscribed. 'The decision to certify a class rests squarely within the discretion of the trial court, and we afford that decision great deference on appeal, reversing only for a manifest abuse of discretion: "Because trial courts are ideally situated to evaluate the efficiencies and practicalities of permitting group action, they are afforded great discretion in granting or denying certification." [Citation.] A certification order generally will not be disturbed unless (1) it is unsupported by substantial evidence, (2) it rests on improper criteria, or (3) it rests on erroneous legal assumptions. [Citations.]' [Citations.]" (*Id.* at p. 1022.)

II. *No Abuse of Discretion in the Court's Class Certification Decision*

On appeal, Crossroads Village argues Antonio did not have standing to challenge the enforceability of the Release Agreements because he did not sign one. In addition, Crossroads Village contends Antonio failed to satisfy the "community of interest" requirement. We address these arguments in turn.

A. *Antonio Had Standing*

In a putative class action, a plaintiff has standing if he or she "was subjected to the same alleged wrong" as the other members of the putative class. (*Fireside Bank v. Superior Court* (2007) 40 Cal.4th 1069, 1090.) Antonio did not sign a Release Agreement, but he alleged and argued he received rent increase notices and that the Release Agreements suffered from the same defect as the rent increase notices: they did not contain language required by the RRIDRO. Thus, Antonio and tenants who signed Release Agreements were subjected to "the same alleged wrong." (*Ibid*.) Antonio also presented evidence he signed the lease for his tenancy and his earnings were used to pay the rent. Accordingly, Antonio had standing to serve as the class representative.

In arguing otherwise, Crossroads Village relies primarily on *First American Title Ins. Co. v. Superior Court* (2007) 146 Cal.App.4th 1564, but the case is inapposite. In *First American*, the court held a plaintiff who was not a member of the proposed class could not "obtain precertification discovery from the defendants for the express purpose of identifying a member of the class who is willing to become a named plaintiff and pursue the action." (*Id.* at p. 1566.) But here, Antonio's proposed class consisted of

tenants who both signed and did not sign the Release Agreements because he argued the Release Agreements themselves constituted illegal rent increases. Therefore, unlike the plaintiff in *First American*, Antonio was a member of the proposed class.

Crossroads Village argues Antonio "is an 'acknowledged stranger' to the issue of the purported unenforceability of the Release Agreements." But the mere fact that a defendant could "raise a defense against certain class members that would not apply to [Antonio] does not defeat [his] standing[.]" (*Medrazo v. Honda of North Hollywood* (2008) 166 Cal.App.4th 89, 99.) Antonio alleged and argued he was "subjected to the same alleged wrong, by the same defendant, as the other members of the putative class[.]" (*Ibid.*) Crossroads Village fails to establish Antonio's interests were " ' "antagonistic to or in conflict with the objectives of those [he] purports to represent." ' " (*Ibid.*)

B. *Common Questions Predominated*

Next, Crossroads Village argues the court erred "in concluding that common, as opposed to individual questions, predominated" regarding the Release Agreements. We disagree. " 'Predominance is a comparative concept, and "the necessity for class members to individually establish eligibility and damages does not mean individual fact questions predominate." [Citations.] Individual issues do not render class certification inappropriate so long as such issues may effectively be managed. [Citations.] [¶] Nor is it a bar to certification that individual class members may ultimately need to itemize their damages.' [Citation.]" (*Medrazo v. Honda of North Hollywood, supra,* 166 Cal.App.4th at pp. 99–100.)

In granting class certification, the court found Antonio "has explained his theories for invalidating the releases and the issues raised by those theories, and demonstrated that they are predominantly common. These issues are the following contentions, which Plaintiff must prove: [¶] (1) that each of the releases contained an unlawful 'rent increase': This issue can be tried using common evidence (the original lease, the rent increase notices, the release, and Defendant's rental ledgers) and will not require individualized mini-trials. [¶] (2) that Defendant's releases had an illegal object and/or

that [they] 'violate the public policy of [the] RRIDRO': While Defendant presents colorable challenges on the merits, Defendant does not demonstrate that there are individualized issues and common issues of fact and law appear to predominate. [¶] (3) that the releases did not have sufficient consideration, because there was such a 'vast disparity' between settlement payments and unlawfully collected rents: This issue can be tried through analysis of rent ledgers, which are common."

In arguing the court abused its discretion, Crossroads Village focuses on "the potential differing circumstances surrounding each Releasor's execution of the Release Agreements." Crossroads Village argues that "the rental amounts paid by each Releasor differed, as did the amount of consideration received by each Releasor pursuant to the terms of the Release Agreements." But Antonio's "theories for invalidating" the Release Agreements did not depend upon the circumstances under which tenants entered into the Release Agreements or the differing amounts of rent they paid. Crossroads Village fails to explain why the court should have viewed those differing circumstances or amounts as a bar to class certification. (*Brinker Restaurant Corp. v. Superior Court, supra,* 53 Cal.4th at p. 1022 [affording trial courts great deference in class certification decisions].) Importantly, the trial court found the notices of rent increase were "the same in all material respects for every member of the putative class."

C. *Antonio's Claims Were Typical*

Crossroads Village argues Antonio's claims were not typical because, unlike most of the proposed class members, he did not execute a Release Agreement and had no real interest in proving they were invalid. In so arguing, Crossroads Village relies primarily on federal cases. For example, in *Melong v. Micronesian Claims Com'n* (D.C. Cir. 1980) 643 F.2d 10, the District of Columbia Circuit Court of Appeals stated the execution of releases adds "new and significant issues" to federal class actions such that "serious questions are raised concerning the typicality of the class representative's claims . . . ." (*Id.* at p. 15.)

We discern no abuse of discretion in the court's determination that Antonio's claims were typical even though he did not sign a Release Agreement. The purpose

of the typicality requirement " ' "is to assure that the interest of the named representative aligns with the interests of the class. [Citation.] ' "Typicality refers to the nature of the claim or defense of the class representative, and not to the specific facts from which it arose or the relief sought." ' [Citations.] The test of typicality 'is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct.' " ' " (*Martinez v. Joe's Crab Shack Holdings* (2014) 231 Cal.App.4th 362, 375.)

Here, Antonio argued the Release Agreements themselves constituted illegal rent increases, which was the same argument he made regarding rent increase notices received. He alleged and argued tenants who signed Release Agreements suffered the same injury as those who did not: they were subject to rent increases that did not comply with the terms of the RRIDRO. Crossroads Village does not argue that Antonio faced " 'unique defenses which threaten to become the focus of the litigation.' " (*Nitsch v. Dreamworks Animation SKG Inc.* (N.D. Cal. 2016) 315 F.R.D. 270, 284 [determining typicality requirement satisfied because all class members incurred the same alleged injury even though some class members had arbitration or release agreements with some defendants].) Thus, Antonio's interests were sufficiently aligned with the interests of tenants who signed Release Agreements to satisfy the typicality requirement.[2]

Crossroads Village argues the court erred in refusing to consider, at the class certification stage, the merits of its argument that the Release Agreements were enforceable. We reject the argument. "[A]ny 'peek' a court takes into the merits at the

[2] In *Victor Fernandez et al. v. Villas Papillon, LLC* (May 29, 2019, A151765 [nonpub. opn.]), Division One of this court concluded the trial court erred in certifying a class under circumstances similar to those at issue here. Division One determined the plaintiffs could not establish typicality because their choice not to sign release agreements "created the potential for conflicting interests between the plaintiffs and those tenants who executed release agreements." Here, we discern no potential for conflicting interests sufficient to undermine the court's determination that Antonio's claims were typical.

certification stage must 'be limited to those aspects of the merits that affect the decisions essential' to class certification. [Citation.]" (*Brinker Restaurant Corp. v. Superior Court, supra*, 53 Cal.4th at p. 1024.) Here, at the class certification stage, the court properly focused on the nature of the evidence that would be used to establish or attack the enforceability of the Release Agreements, and whether this evidence could be addressed on a class-wide basis. The trial court acted well within its discretion in certifying the class.

III. *The Court Erred in Determining the Release Agreements Were Not Enforceable*

In its amended statement of decision, the court found "the Release Agreements did not result in a waiver or compromise of the rent increases resulting from the noncompliant notices." Where, as here, the extrinsic evidence is not in conflict, " 'construction of the agreement is a question of law for our independent review.' " (*Timney v. Lin* (2003) 106 Cal.App.4th 1121, 1126.) The parties agree we should review de novo the court's interpretation of the Release Agreements and whether they are enforceable. We are not persuaded that, by signing the agreements, putative class members did not release or waive their claims arising from defective rent increase notices.

A. *The Release Agreements*

The Release Agreements are each labeled "Confidential Release and Settlement Agreement." In the recitals, they provide "Landlord has issued Tenant certain Notices of Change of Terms of Tenancy . . . which increased Tenant's rent," and "Landlord discovered a procedural defect in the Notices of Change of Terms and Landlord wishes to correct the deficiency." They provide that "[i]n full and final settlement of any and all claims by Tenant against Landlord relating to the Notices of Change of Terms and any issues associated with the Notice of Change of Terms, Landlord hereby agrees" to reduce the tenant's current rent, to issue a one-time rent concession credited to the tenant's account, and each agreement also specified the amount of the tenant's rent going forward. In return, the tenant "hereby releases, acquits and forever, absolutely and unconditionally

discharges Landlord and all of its agents . . . from any and all actions, causes of actions, claims, demands, rights, injuries, debts, obligations, liabilities, contracts, duties, damages, costs, attorneys' fees, expenses or losses of every kind, . . . including, without limitation, any and all claims related to or arising from the Notices of Change of Terms, including . . . any claims under Tenant's lease and other claims for (1) rent abatement, and (2) reimbursement of rental charges (collectively referred to as the 'Released Claims')."

The tenants also waived unknown claims and agreed that "this is a full and final release of any and all claims and causes of action . . . , including any and all claims for any alleged . . . damages of any type or description arising out of, or in any way connected with, the Released Claims." Each agreement provides "Tenant further acknowledges that there is a risk that such damages as are presently known may become more serious than Tenant now expects or anticipates. Nevertheless, Tenant acknowledges that this Agreement has been negotiated and agreed upon in light of these realizations and Tenant hereby expressly waives all rights which Tenant may have in such unknown or unanticipated claims related to the Released Claims. In so doing, Tenant . . . specifically waives all rights she may have under California Civil Code Section 1542." Each agreement provides the text of this code section in block capitals. At the end of the document, immediately above the signature lines, each agreement also provides in bold and block capitals that "this agreement includes a general release of all known and unknown claims."

B. *The RRIDRO's Requirements Regarding Mandatory Language for Rent Increase Notices Do Not Apply to the Release Agreements*

Antonio contends the Release Agreements are unlawful and unenforceable because they qualified as "rent increases" under the RRIDRO and they failed to include mandatory RRIDRO language. We disagree.

Section 9.60.040, subdivision (a) of the RRIDRO, entitled "Requirements for rent increase notice," stated: "Landlord shall provide all tenants . . . with a notice informing the tenants about the existence of the city's rent increase dispute resolution as provided in

this chapter and that they can receive a copy of the chapter by contacting the city's office of neighborhoods . . . . Prior to any rent increase, every landlord shall provide their tenants a notice of rent increase as prescribed in this chapter." Section 9.60.040, subdivision (d) provided that "each notice of rent increase shall state in bold type: [¶] NOTICE: You are encouraged to contact . . . [the landlord's agent] . . . to discuss this rent increase for your rental unit. However, Chapter 9.60 of the Fremont Municipal Code provides a procedure for conciliation, mediation and fact finding for disputes over rent increases. To use the procedure and secure additional information about the city ordinance, you must contact . . . [a city representative] . . . within 15 days following receipt of this notice."

Here, when it presented tenants with the Release Agreements in March 2014, Crossroads Village was not attempting to notify its tenants of a pending rent increase. Instead, Crossroads Village was responding to a lawsuit filed two months earlier and was attempting to compromise the claims of putative class members early in the litigation by offering them a settlement: a reduction of their current rent and a one-time rent concession as consideration for a waiver of any claim for reimbursement of past over-payments and the unconditional discharge of all claims against the landlord relating to defective rent increase notices. However one feels about this strategy, it is simply not plausible that the drafters of the City of Fremont's municipal code intended a release and settlement agreement offered by a party to pending litigation over a rent increase dispute to include the language required by section 9.60.040, subdivision (d) of the RRIDRO. This ordinance specified language that a landlord was required to include in a "rent increase notice," not in a settlement agreement.

Antonio claims "the Release Agreements imposed a rent increase from the rent tenants were paying before the void increases." But the RRIDRO's definition of what constituted a rent increase was ambiguous. It defined " 'Rent increase' " as "any upward adjustment of the base rent amount specified by the original contract." However, it earlier had defined " 'Base rent' " as "the rental amount required to be paid by the tenant to the landlord in the month immediately preceding the effective date of the rent

increase." Based on this language, it is not clear if the City of Fremont intended for parties to look to a tenant's original lease amount or the amount the tenant was paying in the prior month to determine if there was a rent increase. Antonio argues the tenants' "base rent" was the rent they were paying on January 9, 2010, the beginning of the class period, but this definition of "base rent" derives from the statute of limitations for class actions, not the RRIDRO's definitions. Given these ambiguities in the RRIDRO, we cannot conclude the Release Agreements—which lowered tenants' rent from what they were paying the previous month—were "rent increase notices" that were required to include the language contained in section 9.60.040 of the RRIDRO.

In arguing the Release Agreements violated the law, Antonio relies on cases such as *Gombiner v. Swartz* (2008) 167 Cal.App.4th 1365. His reliance is misplaced. In *Gombiner*, the Court of Appeal determined the trial court erred "when it concluded the parties could by mutual agreement exempt the property from" the requirements of a rent control ordinance that limited a landlord's ability to increase rent. (*Id.* at pp. 1369, 1372.) But here, there is no language in the Release Agreements that attempts to exempt Crossroads Village from the requirements of the RRIDRO, which pertained to language landlords were required to include in rent increase notices. The court erred in concluding the Release Agreements were inadequate to " 'compromise the void amounts.' "

C. *The Release Agreements Do Not Violate Public Policy*

The trial court found the Release Agreements unenforceable. We disagree. In our view, this case is similar to *Kaufman v. Goldman* (2011) 195 Cal.App.4th 734 (*Kaufman*), in which our colleagues in Division One of this court emphasized "a strong public policy favoring settling of disputes," including landlord-tenant disputes. (*Id.* at p. 745.) In *Kaufman*, the defendant entered into a settlement agreement whereby she agreed to move out of her apartment after seven years in exchange for her landlord's dismissal of an unlawful detainer action. (*Id.* at p. 738.) She also waived any rights she had under San Francisco's rent control ordinance to challenge a future action to regain possession. (*Kaufman*, at p. 738.) Seven years later, the tenant argued the agreement

was a void waiver of her rights under the ordinance that violated public policy. (*Id.* at pp. 743–746.)

Kaufman held otherwise. (*Kaufman*, *supra*, 195 Cal.App.4th at pp. 744–745.) Even though the San Francisco ordinance provided that any waiver by a tenant of rights " 'shall be void as contrary to public policy,' " the court determined the ordinance provision did not apply to "the settlement of a legal claim that was made for valuable consideration in return for termination of litigation." (*Ibid*.) The court found the settlement agreement did not violate public policy because the tenant and her landlord settled pending litigation in exchange for the tenant's right to continue living in the apartment for seven years. (*Id.* at pp. 746–747.)

Here, the case for enforcing the Release Agreements is even stronger than in *Kaufman* because, as Antonio conceded at oral argument, there is no provision in the RRIDRO that expressly attempts to void any waiver by a tenant of his or her rights. With regard to the adequacy of consideration, Antonio contends tenants received "a small 'one-time rent concession' . . . [that] was far below the undisputed amounts to which they were entitled." But they also received a reduction of their current rent. We cannot say this consideration was inadequate or that, at the time tenants entered into this bargain, they could not have preferred it over the prospect of future, potential class action damages. (*Geraghty v. Shalizi* (2017) 8 Cal.App.5th 593, 599 ["the parties should be held to the terms of their negotiated disposition, which afforded benefits to both"].)

Antonio attempts to distinguish *Kaufman* by arguing "there was no bona fide dispute here." In the joint statement of stipulated facts, filed in October 2017, Crossroads Village stipulated, in paragraph 25, that "all rent increases covered by the ordinance but not accomplished in compliance with it are void," and that "Plaintiff and his fellow class members can recover the amount of the illegal increases imposed by Defendant." Antonio views this stipulation as a concession that the "2011–2013 rent increase notices violated [the] RRIDRO and that the rent increases were void. There was thus no dispute to be settled." But Antonio ignores the next paragraph of the joint statement, which provides the parties "disagree as to the effect that the . . . Release Agreements are to have

on liability under [the] RRIDRO. [Crossroads Village's] position is that the Release Agreements are valid and enforceable to prevent or limit [its] liability."

Moreover, Antonio ignores that the Release Agreements were signed over three years before the bench trial when Crossroads Village and the putative class very much had a bona fide dispute. When tenants signed the Release Agreements in March 2014, this case was only two months old, and the complaint alleged not only violation of the RRIDRO, but also that Crossroads Village engaged in unfair business practices, was liable for conversion and punitive damages, and Antonio sought appointment of a receiver. Even after putative class members signed the Release Agreements, there remained a bona fide dispute as to whether the Release Agreements themselves constituted "rent increases" under the RRIDRO. We discern no inherent unfairness in a putative class member's decision to prefer the benefits of an immediate rent reduction and one-time rent concession over a distant expectation of a potentially greater class action damage award. (*Chindarah v. Pick Up Stix, Inc.* (2009) 171 Cal.App.4th 796, 803 [putative class members can release claims as part of settlement of bona fide dispute].)

It is not clear if the tenants who signed the Release Agreements were aware of the putative class action at the time they did so. But they were aware of "a procedural defect in [certain] Notices of Change of Terms," they acknowledged "there is a risk that such damages as are presently known may become more serious than Tenant now expects or anticipates," and they expressly waived their rights under Civil Code section 1542. (See *Jefferson v. Department of Youth Authority* (2002) 28 Cal.4th 299, 302–303, 306–307 [enforcing settlement release of claims that included language waiving rights under Civil Code section 1542].) Antonio fails to establish the Release Agreements violate public policy.[3]

[3] Having found the Release Agreements enforceable, we do not address the parties' contentions regarding the damage award.

DISPOSITION

We affirm the class certification order but vacate the trial court's determination that the Release Agreements were not enforceable. We remand for a recalculation of the damages to be awarded to the class, which now consists of all tenants *who did not execute Release Agreements*, who lived at the apartment complex in Fremont, California, and who, at any time from January 9, 2010 through June 2016, received at least one notice of change of terms of tenancy which notice did not contain language required by the RRIDRO. We otherwise affirm. The parties shall bear their own costs on appeal. (Cal. Rules of Court, rule 8.278(a)(3).)

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Jones, P.J.

WE CONCUR:

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Simons, J.

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Burns, J.

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